***THE HON'BLE MR JUSTICE V.V.S.RAO**

+WRIT PETITION No.21698 of 2006

%Dated 18-12-2006

Seguri Jangaiah

… Petitioner

VERSUS

$ A.P.Khadi & Village Industries, rep.by its Assistant Director, Mahaboobnagar, Mahaboobnagar District and another.

… Respondents.

! Counsel for Petitioners: Sri M.Surender Rao & M.Srinivasa Rao

^Counsel for Respondents: GP for Industries

<GIST:

>HEAD NOTE:

? Cases referred

1. (1990) 4 SCC 594 = AIR 1990 SC 1984
2. (1991) 3 SCC 38 = AIR 1991 SC 1216

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21698 OF 2006

DATED 18TH DECEMBER, 2006

Between

Seguri Jangaiah

... Petitioner

AND

A.P. Khadi & Village Industries, rep. By its Asst. Director, Mahaboobnagar, Mahaboobnagar Dist., and another

.... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21698 OF 2006

ORDER:

Khadi Gramodyog Sangh, Kalwakurthy, Mahaboobnagar District (Khadi Sangh, for brevity) obtained loan from A.P.Khadi & Village Industries Board – first respondent herein. There was default in repayment of the amount advanced. Therefore, action was initiated under A.P.Revenue Recovery Act, 1864 (the Act, for brevity). Auction notice was issued on 07.08.2006. The conditions of auction *inter alia* provided that the auction is liable to be cancelled without assigning any reasons or liable to be stopped. Khadi Sangh committed default in paying arrears to a tune of Rs.7,00,000/- (Rupees seven lakh only). In the auction conducted on 26.08.2006, petitioner herein became the highest bidder at Rs.14,00,000/- (Rupees fourteen lakh only). The petitioner paid a sum of Rs.3,50,000/- including the Earnest Money Deposit (EMD). However, first respondent informed the petitioner that the auction is not confirmed by second respondent and he was advised to take return of the demand draft for Rs.3,50,000/-. Aggrieved by the letter, dated 18.09.2006 of first respondent, present writ petition is filed. It is contended by the petitioner that when he is the highest bidder in the open auction conducted by the respondents, the same cannot be cancelled without giving any reasons. Secondly, it is contended that the bid of the petitioner is far above the prevailing market value and therefore, for

whimsical reasons, respondents cannot cause harm to public interest by not accepting the highest bid. It is the further contention of the petitioner that the District Collector has no power to cancel the auction. After taking notice, learned Assistant Government Pleader for Industries has filed counter affidavit of the first respondent and second respondent at the stage of Admission itself. Relevant file from the office of the second respondent also produced. Therefore, the matter was heard finally and is being disposed of at the Admission stage.

First respondent refers to the orders of the second respondent, dated 11.09.2006, whereunder the auction conducted on 26.08.2006 was cancelled in justification of the impugned action. In the counter affidavit filed by the District Collector, it is stated that so as to attract more prospective and willing bidders of the District in fetching best price in the auction and to safeguard the interest of the Khadi Sangh, auction was cancelled by the first respondent directing return of the EMD. It is further stated as under.

> … it is to submit that the auction of the suit property was initiated by the 1st respondent herein by virtue of powers delegated by respondent No.2 herein u/s 5 of A.P.R.R.Act 1864 read with Section 7 of A.P.Rent and Revenue Sale Act, 1839. Accordingly, the 1st respondent herein, conducted the auction on 26.08.2006 and the petitioner herein was the highest bidder. … Before confirmation of the auction, it was noticed that, the procedure prescribed for publication of Auction Notice has not been properly followed. As per the provision contained u/s 36 (2nd) of the Act, the sale notice shall be issued fixing a period of month at least before the sale and to be placed in the Collector's office, Taluk Cutchary and on the conspicuous part of the land etc. But in the instant case, the Auction Notice has been issued on 7-8-2006, fixing the date of auction on 26.08.2006, i.e., only (20) days time has been given. It was also noticed that the Auction Notice was published in the local news paper on the day of auction i.e., on 26.08.2006, thus the provision u/s 36 (2nd) has been contravened in this instant case and therefore the sale has to be set aside.

Learned counsel for the petitioner and learned Assistant Government Pleader reiterated their position in the pleadings and the oral submissions as well.

The two submissions made by the learned counsel for the petitioner are devoid of any merit. This Court has perused the file from the office of the District Collector. Considerable deliberations among all of the officials in the District Revenue hierarchy are found in the note file. These would belie any criticism of not disclosure of reasons. The ultimate authority found that as required under Section 36 of the Act, notice of one month at least was not affixed at the specified places. This

itself is a sufficient reason. Section 36 of the Act, insofar as it is relevant for the purpose, reads as under.

36. Procedure in sale of immovable property:- In the sale of immovable property under this Act the following Rules shall be observed.

> **(1) Publication:-** The sale shall be by public auction to the highest bidder. The time and place of sale shall be fixed by the Collector of the district in which the property is situated, or other officer empowered by the Collector in that behalf. The time may be either previous to or after the expiration of the fasli year.
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> **(2) Notification one month before sale:-** Previous to the sale the Collector, or other officer empowered by the Collector in that behalf, shall issue a notice thereof in English and in the language of the district, specifying the name of the defaulter; the position and extent of land of his buildings thereon; the amount of revenue assessed on the land, or upon its different sections. The proportion of the public revenue due during the remainder of the current fasli; and the time, place, and conditions of sale. This notice shall be fixed up one month at least before the sale in the Collector's Office and in the Taluk cutcherry, in the nearest police station house, and on some conspicuous part of the land.

A plain reading of the second limb of Section 36 would show that the Collector shall issue notice affixed upto one month at least before the sale and display the same in the Collector's Office and Taluk Cutcherries in the nearest police station and the conspicuous part of the land. As found in the enquiry by the District Collector and other officials, the mandatory requirement was followed by the auction authority more in breach. Therefore, the District Collector in her discretion thought it fit to cancel the auction so as to get better price not subverting the interest of the Khadi Sangh.

The submissions that reasons are not adequate or reasons are lacking cannot be accepted. The system presupposes that all the persons dealing with the matter go on adding the reasons either for rejection or acceptance of a proposal or conferring a benefit on the persons approaching the administration. All these notings of those officials dealing with the matter cumulatively form reasons. If the matter is a quasi-judicial one, it would always be different but in the matter of taking administrative decisions, the collectivity of the opinion of the officials ultimately accepted or rejected by the decision making authority are to be considered as reasons. This principle in Indian Law is well settled.

In **S.N.Mukherjee v Union of India**[1], a question arose whether the Government of India while exercising power of revision/review under the provisions of the Army Act is required to record reasons. The Court considered two questions: (i) Is there any general principle of law which requires an administrative authority to record the reasons for the decision

arrived at? and (ii) If so, does the said principle apply to an order confirming the findings and sentence of Court Marshall and post confirmation proceedings under the Act?

After referring to the precedents in other jurisdictions like U.S.A. and U.K. as well as the precedents of the Supreme Court, the court came to the conclusion that non-disclosure of reasons for an administrative decision violates the principles of natural justice. Though there is a general rule for recording reasons, there is no general rule that reasons should be communicated in every case. It depends on the nature of the power exercised. When quasi-judicial power is exercised, it goes without saying that reasons not only have to be recorded but must be communicated to the aggrieved person. The same is not the case when the authorities exercise administrative powers. When the recording of reasons is either explicitly or impliedly dispensed with by the statutory or authorized instrument, it is not necessary to record reasons. The relevant passage from the judgment in S.N.Mukherjee (supra) must be excerpted, which is as under.

> The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. **The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement.**
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> (emphasis supplied)

In **Union of India v E.G.Nambudiri**[2], the Supreme Court opined that though there is no statutory duty cast upon an administrative authority to record reasons when an application for some benefit, concession or largesse is rejected, yet minimum reasons should be recorded for doing so. It was also observed that reasons need not be at one place by one officer and reasons can be gathered from the entire file. It was held:

> In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. **In Governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action.**
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> (emphasis supplied)

As mentioned earlier, Assistant Government Pleader placed before this Court the file bearing No.E2/664/2003 from the office of second respondent. As already noticed, it contains various reasons and inference can always be drawn that counter affidavit of second respondent is in tune with the notings in the file.

The submission that no power inheres in the District Collector to cancel the auction conducted under the Act is misconceived. Sections 36, 37, 37-A and 38 to 44 of the Act deal with sale of immovable property for realizing the arrears of land revenue on the sum which is deemed to be arrears of land revenue under the Act. Section 37-A of the Act deals with the power of the District Collector to pass an order setting aside sale if a person owning or claiming interest in immovable property sold under the Act, within thirty days from the date of sale, deposits in the treasury of

the taluk a sum equal to 5% of purchase money or a sum equal to the arrears of land revenue for which the immovable property was sold. That is the purport of subsections (1) and (2) of Section 37-A of the Act. Subsection (3) thereof is to the effect that if a person has already applied under Section 38 to set aside the sale of immovable property, such person cannot apply under Section 37-A of the Act. The question, therefore, is whether the Collector is competent to set aside the sale only on an application made either under Section 37-A or 38(1) of the Act. Here it is necessary to extract Section 38 of the Act in toto.

> **38. Application to set aside sale:-** (1) At any time within thirty days from the date of the sale of immovable property, application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake or fraud, in publishing or conducting it; but, except as otherwise as hereinafter provided, no sale shall be set aside on the ground of any such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reasons thereof.
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> (2) If the application be allowed, the Collector shall set aside the sale and may direct a fresh one.
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> (3) ***Order confirming or setting aside sale***:- On the expiration of thirty days from the date of the sale, if no application to have the sale set aside is made under Section 37-A or under clause (1) of this section or if such application has been made and rejected, the Collector shall make an order confirming the sale provided that, if he shall have reason to think that the sale sought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.
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> (4) ***Refund of deposit or purchase money when sale set aside***:- Whenever the sale of any lands is not so confirmed or is set aside, the deposit or the purchase money, as the case may be, shall be returned to the purchaser.
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> (5) ***On confirmation of sale purchaser's name to be registered***:- After the confirmation of any such sale, the Collector shall register the lands sold in the name of the person declared to be the purchaser and shall execute and grant a certificate of sale bearing his seal and signature to such purchaser.
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> (6) ***Certificate of sale***:- Such certificate shall state the property sole and name of the purchaser, and it shall be conclusive evidence of the fact of the purchase in all Courts and Tribunals, where it may be necessary to prove the same; and no proof of the Collector's seal or signature shall be necessary, unless the authority before whom it is produced shall have reason to doubt its genuineness.

Apart from the procedure contemplated to set aside the sale of immovable property by a person owing/claiming interest in the

immovable property as under Section 38-A of the Act. The above section (Section 38) also contemplates the procedure to set aside the sale. Under subsection (1) of Section 38 of the Act, within thirty days a person may make application to Collector to set aside the sale on the ground of material irregularity or mistake or fraud in publishing or conducting sale duly showing that such irregularity has resulted in substantial injury to the applicant. Subsection (3) of Section 38 of the Act contemplates setting aside of the sale by the Collector even if such an application is not made either under Section 38(1) or 38-A of the Act. Whether the sale is set aside on an application or without there being an application, under subsection (2) of Section 38 of the Act, the Collector shall direct a fresh sale. It only means duly following the procedure contemplated under Section 36 of the Act. Therefore, it is not possible to accept the submission that the Collector has no power to set aside the sale without there being an application to that effect. This Court has perused the file produced before this Court, which would show that the Collector came to the conclusion that the procedure contemplated under Section 36 of the Act was not followed. Such a ground is one contemplated under Section 38(1) of the Act for setting aside the sale and there is no strong reason not to read such a ground even into Section 38(3) of the Act. For this reason, the impugned order of the first respondent informing the petitioner that the sale has not been confirmed, is legal and cannot be invalidated on any ground.

In the result, the writ petition is dismissed without any order as to costs.

(V.V.S.RAO,J)

18.12.2006.
pln/ys

Note: LR copy be marked.
(By order)
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[1] (1990) 4 SCC 594 = AIR 1990 SC 1984

[2] (1991) 3 SCC 38 = AIR 1991 SC 1216